

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

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Date: February 1, 2013

RE:

Legend

Husband

Wife

Trust 1

Trust 2

Foundation

Charity

Date 1

Date 2

Date 3

Date 4

Date 5

County Court

a

b

c

d

e

f

State

Dear :

This letter responds to your authorized representative's letter dated September 25, 2012, requesting income and gift tax rulings with respect to the proposed transfer of your interests in trusts to Charity, a charitable organization that meets the requirements of §§ 170(c) and 2522(a) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

On Date 1, Husband and Wife (collectively Trustors) created Trust 1 and funded Trust 1 with assets having a value of approximately \$a. Husband and Wife represent that Trust 1 is a charitable remainder unitrust (CRUT) pursuant to § 664(d)(2).

Paragraph SECOND of Trust 1 provides that in each taxable year of Trust 1, the Trustee shall pay to Husband and Wife during their lifetimes, and after the death of the first of them to die, to the survivor for such time as he or she survives, a unitrust amount equal to b percent of the net fair market value of the assets of Trust 1 valued as of the first day of each taxable year.

Paragraph SIXTH (A) of Trust 1 provides that upon the death of the survivor of Husband and Wife, subject to paragraph SIXTH (B), the Trustee shall distribute all of the then principal and income of Trust 1, other than any amount due to the surviving recipient, to Charity.

Paragraph SIXTH (B) of Trust 1 provides that if either the will of the surviving trustor or a writing by the surviving trustor delivered to the trustee, make specific reference to this paragraph SIXTH (B), and provides for a distribution which is different than the distribution provided in paragraph SIXTH (A), the entire remaining trust principal shall be paid over and distributed as provided in such will or writing, in such amounts as the surviving trustor may direct; provided, however that such payment and distribution shall be made only to an organization or organizations, each of which is described in § 170(b)(1)(A), 170(c), 2055(a), 2522(a), or 2522(b); provided further, however, that no payment or distribution shall be made to an organization which is a private foundation described in § 509(a), other than a private foundation described in § 170(b)(1)(E).

Paragraph SIXTH (E) of Trust 1 provides that, notwithstanding any provision to the contrary, the trustee may distribute currently a portion of the trust assets to the qualified organizations selected by the Trustors pursuant to a separate written instrument which expressly references this paragraph SIXTH and is provided to the trustee in accordance with this paragraph SIXTH.

Paragraph FOURTEENTH of Trust 1 provides that Trust 1 is executed under the laws of State and governed by the laws of State.

On Date 2, Husband and Wife waived their rights to change the designation of Charity as the charitable beneficiary with respect to c percent of the remainder interest of Trust 1.

On Date 3, Husband and Wife created Trust 2 and funded Trust 2 with assets having a value of approximately \$d. Husband and Wife represent that Trust 2 is a CRUT pursuant to § 664(d)(2).

Paragraph SECOND of Trust 2 provides that in each taxable year of Trust 2, the Trustee shall pay to Husband and Wife during their lifetimes, and after the death of the first of them to die, to the survivor for such time as he or she survives, a unitrust amount equal to e percent of the net fair market value of the assets of Trust 2 valued as of the first day of each taxable year.

Paragraph SIXTH (A) of Trust 2 provides, in pertinent part, that upon the death of the survivor of Husband and Wife, subject to paragraph SIXTH (B), the Trustee shall distribute all of the then principal and income of Trust 2, other than any amount due to the surviving recipient, to Charity.

Paragraph SIXTH (B) of Trust 2 provides that if either the will of the surviving trustor or a writing by the surviving trustor delivered to the trustee, makes specific reference to this paragraph SIXTH (B), and provides for a distribution which is different than the distribution provided in paragraph SIXTH (A), the entire remaining trust principal shall be paid over and distributed as provided in such will or writing, in such amounts as the surviving trustor may direct; provided, however that such payment and distribution shall be made only to an organization or organizations, each of which is described in § 170(b)(1)(A), 170(c), 2055(a), 2522(a), or 2522(b); provided further, however, that no payment or distribution shall be made to an organization which is a private foundation described in § 509(a), other than a private foundation described in § 170(b)(1)(E).

Paragraph THIRTEENTH of Trust 2 provides that Trust 2 is executed under the laws of State and governed by the laws of State.

The Trustors represent that at the time Trust 1 and Trust 2 (collectively, Trusts) were created, they had no intention to divide the unitrust and remainder interests as a method to avoid the partial interests rules in § 170(f).

On Date 4, Husband and Wife entered an agreement (Agreement) with Charity. Agreement requires that Husband and Wife irrevocably relinquish any right to change the charitable beneficiaries of the Trusts, acknowledge that Charity is the sole remainder beneficiary of Trusts, and convey to Charity all of Trustors' respective rights to all remaining unitrust amounts payable to Trustors from Trusts. Husband, as trustee of Trusts, agrees to assign to Charity all assets of Trusts within thirty days of the Approval Date of Agreement. Trustors have also agreed to transfer to Charity additional assets equal to the difference between \$f and the sum of the value of the assets of Trusts on or before the date which is fifteen days after the Approval Date of Agreement. The Approval Date of Agreement is the later of (A) the date on which County Court

approves the agreement and its effect on Trusts or (B) the date on which Trustors receive a private letter ruling from the Service approving the transaction. On Date 5, County Court approved Agreement.

You have requested the following rulings:

1) Husband and Wife will be entitled to a gift tax deduction under § 2522 for the value of the remainder interests in Trusts transferred as a result of their irrevocable renunciation of their right to change the charitable remainder beneficiary of Trusts and their irrevocable designation of Charity as the sole charitable remainder beneficiary of Trusts.

2) Husband and Wife will be entitled to a gift tax deduction under § 2522 for the value of their unitrust interests in Trusts transferred as a result of their assignment of those unitrust interests to Charity.

3) Husband and Wife will be entitled to an income tax deduction under § 170 for the value of their unitrust interests in Trusts transferred as a result of their assignment of those unitrust interests to Charity.

4) Based on the representation that Trusts qualify as CRUTs under § 664, and based on the representation that Husband and Wife did not divide their interest in the properties originally transferred to Trusts to avoid the partial interest rules, § 170(f)(2)(A) and § 1.170A-6(b)(1)(iii) of the Income Tax Regulations will not disallow a charitable contribution deduction for Husband and Wife under § 170 based on the present fair market value of the remainder interest originally contributed to the Trusts.

LAW AND ANALYSIS

Rulings 1 – 4

Section 170(a)(1) provides that there shall be allowed as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made within the taxable year.

Section 170(f)(2)(A) provides that, in the case of property transferred in trust, no deduction is allowed for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664), or a pooled income fund (described in § 642(c)(5)).

Section 170(f)(2)(B) provides that no charitable contribution deduction is allowed for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or a fixed percentage distributed annually of the fair market value of the trust property, determined annually,

and the grantor is treated as the owner of the interest for purposes of applying § 671 (relating to grantor trusts).

Section 170(f)(3)(A) provides that a contribution (not made by a transfer in trust) of less than the taxpayer's entire interest in property is not allowed as a charitable contribution deduction except to the extent such contribution would have been allowed as a deduction had it been transferred in trust.

Section 170(f)(3)(B)(ii) provides that § 170(f)(3)(A) does not apply to a contribution of an undivided portion of the taxpayer's entire interest in property.

Sections 1.170A-6(a)(2) and 1.170A-7(a)(2)(i) provide that a deduction is allowed for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus to avoid § 170(f)(3)(A), the deduction will not be allowed.

Section 1.170A-6(b)(1)(iii) provides that no deduction is allowed under § 170 for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the trust is a charitable remainder unitrust described in § 664(d)(2) and § 1.664-3.

Section 1.170A-7(b)(1) provides that an undivided portion of a taxpayer's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the taxpayer in the property and must extend over the entire term of the taxpayer's interest in the property.

Section 1.170A-1(c)(1) provides that, if a charitable contribution is made in property other than money, the amount of the contribution is generally the fair market value of the property at the time of the contribution.

Section 1.170A-1(e) provides that if as of the date of the gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible.

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is a trust: (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less frequently than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of creation of the trust) for a term of years

(not in excess of 20 years) or for the life or lives of such individual or individuals; (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the uses of any person other than an organization described in § 170(c); (C) following termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or a part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined in § 664(g)); and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of the remainder interest passing to charity is at least 10 percent of the initial net fair market value of all property placed in the trust.

Section 2501(a) imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual.

Section 2511(a) provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-2(c) of the Gift Tax Regulations provides, in part, that a gift is incomplete if and to the extent a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. Thus, a gift would be incomplete to the extent the donor retains the power to designate the beneficiaries of the gift, even if the power retained is limited to designating charitable beneficiaries. See Rev. Rul. 77-275, 1977-2 C.B. 346.

Section 25.2511-2(f) provides, in part, that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event which completes the gift and causes the tax to apply.

Section 2522(a)(2) provides that, in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 2522(c)(2) provides that where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in § 2522(a) or (b), and an interest in the same property is retained by the

donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in § 2522(a) or (b), no deduction shall be allowed under this section for the interest which is, or has been, transferred unless -- (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or (B) in the case of any other interest such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

In Situation 2 of Rev. Rul. 86-60, 1986-1 C.B. 302, in 1980, A created a charitable remainder annuity trust described in § 664(d)(1). The trust instrument provided that the trustee shall pay the annuity amount annually to A for life and upon A's death to B, the successive life interest beneficiary, for such time as B survives. Upon the death of the survivor of A and B, the corpus is to be distributed to X, a charitable organization that meets the requirements of §§ 170(c) and 2522(a). In 1984, A and B assigned their interests in the trust to the charitable remainder beneficiary. A made a completed gift under § 2511 to B of the secondary life annuity interest in the trust in 1980. Because A made a completed gift in the trust to a noncharitable beneficiary, the charitable gift tax deduction is allowed for A's 1984 transfer only if the interest is described in § 25.2522 (c)-3(c)(2). Because A's 1984 transfer to X is of a right to receive a fixed amount annually for the life of A and qualifies as a guaranteed annuity, the interest qualifies under § 25.2522 (c)-3(c)(2)(v), and the gift qualifies for a gift tax charitable deduction under § 2522. In addition, A's transfer of A's entire life annuity interest in 1984 qualifies for an income tax deduction under § 170. The life annuity interest was the only interest in the charitable remainder annuity trust that A owned at the time of the transfer. Although A had previously divided the interest A held in the property, the division was not done to avoid § 170(f)(3)(A). Thus, under § 1.170A-7(a)(2)(i), A's transfer of A's entire life annuity interest qualifies for an income tax deduction under § 170. Furthermore, following the transfer, B did not retain any interest in the trust, and at no time had B made a transfer of an interest in the trust for a private purpose. Consequently, there is no requirement that the transfer to charity be in a form described in § 25.2522(c)-3(c)(2), and B's transfer of B's annuity interest to charity qualifies for a deduction under § 2522(a). Finally, B's transfer qualifies for an income tax charitable deduction under § 170. The secondary life annuity interest was the only interest in the trust that B owned at the time of the transfer. Therefore, under § 1.170A-7(a)(2)(i), B's transfer of B's entire secondary life annuity interest qualifies for an income tax deduction under § 170.

In this case, the taxpayers represent that Trust 1 and Trust 2 satisfy the requirements of § 664(d)(2). Based on the information submitted and representations made we conclude that the terms of Agreement will not preclude Trust 1 and Trust 2 from qualifying as CRUTs.

Under the proposed transaction, Trustors will irrevocably relinquish any right to change the charitable beneficiaries of the Trusts and acknowledge that Charity is the sole remainder beneficiary of Trusts. The gift of the remainder interests in Trusts to Charity would be complete. Accordingly, based on the facts presented and the representations made, we conclude that Husband and Wife will be entitled to a gift tax deduction under § 2522 for the value of the remainder interests in Trusts transferred. In addition, based on the representation that Trusts qualify as CRUTs under § 664, § 170(f)(2)(A) will not disallow a charitable contribution deduction for the remainder interest under § 170 for Husband and Wife.

Furthermore, under the proposed transaction, Trustors will convey to Charity all of Trustors' respective rights to all remaining unitrust amounts payable to Trustors from Trusts. Husband and Wife will convey their entire interest in Trusts to Charity and, following the transfer, Husband and Wife will not retain any interest in Trusts. Accordingly, based on the facts presented and the representations made, we conclude that Husband and Wife will be entitled to a gift tax deduction under § 2522 and income tax deduction under § 170 for the value of their unitrust interests in Trusts.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

James F. Hogan
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter